

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Implementation of Sections) MM Docket No. 92-266
of the Cable Television Consumer)
Protection and Competition Act)
of 1992: Rate Regulation)

**OPPOSITION OF THE NATIONAL CABLE TELEVISION
ASSOCIATION, INC. TO PETITION FOR RECONSIDERATION**

The National Cable Television Association, Inc. ("NCTA"), by its attorneys and pursuant to Section 1.429(f) of the Commission's rules, hereby submits its Opposition to the Petition for Reconsideration submitted by Engle Broadcasting (hereinafter "Engle") in the above-captioned proceeding.¹

Engle asks the Commission to revise its going forward rules adopted in November 1994² to provide "encouragement" to cable operators to add low power stations. Specifically, Engle asks that the Commission allow cable operators who add a low power television station to their basic tier to increase their Operator's Cap from \$1.20 to \$1.40, and their License Fee Reserve from 30 to 35 cents.³ Engle

¹ The Public Notice announcing the filing of Petitions for Reconsideration in the above-captioned proceeding failed to include Engle Broadcasting's Petition. NCTA previously filed an Opposition to the other Petitions for Reconsideration on February 3, 1995. A Public Notice announcing Engle's filing appeared in the Federal Register on February 23, 1995.

² Sixth Order on Reconsideration, MM Docket No. 92-266 (rel. Nov. 18, 1994).

³ Engle Petition at 3.

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claims that modifying the rules in this manner will carry out Congress' alleged mandate to encourage cable operators to carry low power television stations.⁴

NCTA as a general matter does not oppose the concept of increasing the Operator's Cap to provide operators with opportunities to add more services to their regulated tiers. However, we object to Engle's proposal insofar as it asks that the Commission restrict eligibility for such an increase solely to carriage of low power television stations. The Commission therefore should not adopt Engle's proposal, which would unfairly disadvantage cable programmers who, like Engle, are vying for a place on cable systems with scarce channel capacity.

ARGUMENT

Engle's petition claims that "the Commission has a duty to provide an 'encouragement' for cable operators" to carry LPTV stations,⁵ and that this mandate should be accomplished by revising the going forward rules to provide operators with an inducement to add low power stations to their systems. Engle, however, fails to show that such a duty exists or why low power stations should be the sole beneficiaries of any increase in the going forward formula.

Congress in its 1992 Cable Act findings did say that "cable systems should be encouraged to carry low-power television stations licensed to the communities served by those systems where the low-power station creates and broadcasts, as a substantial part of its programming day, local programming." ⁶ But that statement hardly supports Engle's interpretation that the FCC has an independent "duty" to adopt rules favoring carriage of low power stations (over the carriage of other programmers) in the context of cable rate regulation. Rather, the finding was

⁴ Id.

⁵ Id. (emphasis supplied).

⁶ Cable Act, Section 2(a)(21).

intended to justify Congress' extension of must carry rights to "qualified" low power stations in Section 614 of the 1992 Cable Act.⁷ Engle points to nothing further in the Act or its legislative history that supports its conclusion that the Commission has an "[o]bligation to now correct this oversight."⁸

We do not take issue with Engle's apparent view that operators should be able to recover under the new going forward formula for channels added to a basic tier, or that the going forward rules should allow for expanded opportunities for carriage of additional program services. However, cable program networks should also benefit from any rule change in this regard. Cable program networks, like low power stations, may well desire carriage on the basic tier. There is no justification for a Commission rule that would give an advantage to a LPTV station presenting one hour of local primetime programming⁹ over a 24 hour local cable news service --or any other cable programming service. This is particularly true since low power stations already have a free pathway to the home over-the-air that cable program networks do not enjoy.

⁷ See generally Conference Report at 74 (Sept. 14, 1992) (describing conferee agreement concerning inclusion of low power must carry rights).

⁸ Engle Petition at 1.

⁹ Id. at 3 (proposing that Commission may require LPTV stations to broadcast local programming for a minimum of one hour during the 6 p.m. to 12 midnight time period in order to be eligible for carriage under its proposed going forward revisions.)

CONCLUSION

For the foregoing reasons, the Commission should decline to adopt the rules proposed by Engle that would discriminate in favor of low power television stations and against cable program networks.

Respectfully submitted,

Daniel L. Brenner/dlb

Daniel L. Brenner

Neal M. Goldberg

Diane B. Burstein

1724 Massachusetts Ave, NW
Washington, D.C. 20036

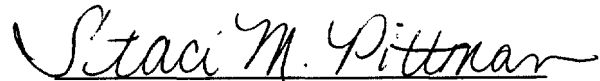
Attorneys for
THE NATIONAL CABLE
TELEVISION ASSOCIATION, INC.

March 10, 1995

CERTIFICATE OF SERVICE

I, Staci M. Pittman, do hereby certify that on this 10th day of March, 1995, copies of the foregoing "**Opposition of the National Cable Television Association to Petition for Reconsideration**" were delivered by first-class, postage pre-paid mail upon the following party:

Paul V. Engle, General Partner
Engle Broadcasting
Winslow Professional Center
Rt. 73 & Tansboro Road
Winslow Twp, NJ 08009

A handwritten signature in cursive script that reads "Staci M. Pittman". The signature is written in dark ink and is positioned above the printed name.

Staci M. Pittman